

REMARKS

Status of the Application

Claims 1-52 are presently pending. All claims are subject to a restriction requirement, as detailed below.

Summary of the Office Action

The Office Action requires restriction under 35 U.S.C. 121 and 372. Specifically, the Action advises that the application contains inventions or groups of inventions that do not form a single general inventive concept. In particular, the application may be divided into four groups of inventions:

Group I, claims 1-16, drawn to a method for assessing the patency of a blood vessel;
Group II, claims 17-39, drawn to a method of assessing blood flow in tissue;
Group III, claims 40-51, drawn to a method for locating a vessel in tissue; and
Group IV, claim 52, drawn to a device for measuring a blood vessel.

The Action advises that these groups do not share a technical relationship.

Comments in Response to the Restriction Requirement

Applicants respectfully request that the restriction requirement be withdrawn in view of the following comments.

The claims of Groups I-III share a technical relationship and form a single inventive concept. The claims are all method claims. Each employs the following steps:

- a) administering a fluorescent dye to an animal;
- b) obtaining at least one angiographic image; and
- c) evaluating the at least one angiographic image.

These claims thus share a technical relationship in the way they are performed. Second, although the preamble of each claim specifies a different application, the overall result is that visualization of blood vessels is achieved. It is the manner in which the angiograms are subsequently interpreted which yields different conclusions. In other words, in each method, blood vessels are visualized by administering a fluorescent dye and obtaining at least one angiographic image. Evaluating and studying that angiographic image can yield a variety of conclusions regarding patency of blood vessels (Group I), blood flow (Group II) and position of

blood vessels (Group III). Thus, in each of Groups I-III, the common techniques are employed to produce a common result: an angiogram showing the dye fluorescing in blood vessels.

The claim of Group IV is a device claim. It is submitted that the device similarly forms part of a single inventive concept along with Groups I-III. The device of the invention accomplishes at least one of the method steps mentioned above, namely, capturing an angiographic image of the fluorescing dye in blood vessels. Again, the resulting angiogram can be evaluated to extract certain data, e.g., the diameter of a blood vessel. In the case of claim 52, this evaluation step is accomplished by a software program.

Applicants further note that the Examiner has not indicated that any group of these claims is classified differently from another. Thus, there is no extra burden placed on the Examiner to search the relevant art.

Applicants respectfully submit that the foregoing traverses the restriction requirement, and request that the requirement to restrict the claims be withdrawn.

Provisional Election

Applicants provisionally elect, without prejudice, the claims of Group I (1-16) for further prosecution.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



Christopher T. Griffith, Reg. No. 33,392
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, Illinois 60601-6780
(312) 616-5600 (telephone)
(312) 616-5700 (facsimile)

Date: December 22, 2003